

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

JERALD AND JOY SHOUSE,)	
)	
Plaintiffs,)	
)	
vs.)	Case No. CIV-05-831-HE
)	
ROBERT PRICE, et al.,)	
)	
Defendants.)	

REPORT AND RECOMMENDATION

Plaintiff Jerald Shouse, a state prisoner appearing pro se, brings this action pursuant to 42 U.S.C. § 1983 alleging a violation of his constitutional rights. Pursuant to an order entered by United States District Judge Joe Heaton, the matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). For the following reasons, it is recommended that this action be dismissed against Defendants Jon Boyd, Jeffery Lynch, and Gary Wingo.

On September 21, 2006, after obtaining leave of Court, Plaintiff filed his second amended complaint, naming as Defendants, Robert Price, Bill Groce, Dana Wilson and Lewain Learned. [Doc. No. 63]. Plaintiff omitted three previously-named Defendants: Jon Boyd, Jeffery Lynch and Gary Wingo. Compare Doc. No. 9 and Doc. No. 63. “It is a well-established general rule that an amended complaint . . . supersedes the complaint it modifies and renders the prior complaint of no legal effect.” Fullerton v. Maynard, No. 91-7002, 1991 WL 166400, at *2 (10th Cir. Aug. 29, 1991).¹ Therefore, the undersigned

¹Unpublished disposition cited as persuasive authority pursuant to Tenth Circuit Rule 36.3.

recommends that this matter be dismissed without prejudice as to Defendants Jon Boyd, Jeffery Lynch and Gary Wingo.²

RECOMMENDATION

For the reasons set forth above, it is recommended that this action be dismissed without prejudice against Jon Boyd, Jeffery Lynch and Gary Wingo. Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by November 14, 2006, in accordance with 28 U.S.C. § 636 and Local Civil Rule 72.1. Plaintiff is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of both factual and legal questions contained herein. Moore v. United States, 950 F.2d 656 (10th Cir. 1991). This Report and Recommendation only partially disposes of the issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 25th day of October, 2006.



DOYLE W. ARGO
UNITED STATES MAGISTRATE JUDGE

²The undersigned also entered an order on July 13, 2006, noting that these three Defendants had not yet been served, and granting a sua sponte extension of time until August 18, 2006, to do so. [Doc. No. 51]. In that order, Plaintiff was cautioned that failure to serve the three Defendants by that deadline could result in dismissal of the action against them.